IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8481 of 1988

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHOR KESHAVJI KOTHARI

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH for Petitioner

Ms.Manisha Lavkumar, Assistant GOVERNMENT PLEADER, for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 18/02/2000

ORAL JUDGEMENT

By this petition, the petitioner states that the shop, in which he was carrying on his business, was

demolished by respondents Nos. 2 and 3, being the Assistant Collector and Chief Officer of Bhuj Nagarpalika, respectively. This Court, by an interim order, granted on 23.12.1988, restrained the respondents from stopping the petitioner from reconstructing the shop to bring it in workable condition. In the interim order, however, a condition has been imposed that in bringing the shop again to a workable condition, the petitioner shall not encroach any part of public street or public place adjoining the shop in question.

The petition is pending since the year 1988 and the respondents have failed to file any counter affidavit to controvert the facts stated in the petition. Ms. Manisha Lavkumar, learned Assistant Government Pleader, states that the petitioner has no title to the land since the original owner, i.e. his father, died and, thereafter, he did not obtain any title to the land. Learned counsel for the petitioner at the Bar disputed the above position and claims to be in possession as owner.

As the respondents have failed to file any counter affidavit to raise any dispute of tile, this court cannot go into that question. Since the averments made in the petition have remained uncontroverted, the petition is allowed. Rule is made absolute. The interim relief granted on 23.12.1988 is to operate as final relief. There shall be no order as to costs.

18th February, 2000 (D.M. Dharmadhikari, C.J.)

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